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International Court of Justice

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Official Transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany on 29 June 1946, 1000-1300, Lord Justice Lawrence presiding.

THE PRESIDENT: I will deal with the supplementary applications for documents.

The first application on this list was on behalf of the defendant von Neurath, and that has been dealt with.

The second was on behalf of the defendant Streicher. That was withdrawn.

The third was on behalf of the defendant Doenitz for an affidavit of former Fleet Judge Jakobs. That application is granted.

The next two, 4 and 5, were on behalf of the defendant von Neurath. Those have been withdrawn.

The next three, 6, 7, and 8, on behalf of the defendant Rosenberg, are denied.

The next, on behalf of the defendant von Papen, have all been dealt with during the presentation of the defense on behalf of von Papen.

The next two, on behalf of the defendant Bormann, are granted.

The last three, 12, 13, and 14, on behalf of the defendant Goering, are subject to the possibility of agreement being reached upon the question of whether affidavits are to be presented or witnesses called, and therefore that application is postponed.

That is all.

SIR DAVID MAXWELL FYFE: My Lord, before the Tribunal goes on with the business of the day, I should like to inform the Tribunal of the results of my inquiries as to outstanding witnesses and perhaps these could be supplemented by any of the learned counsel who can.

My Lord, as far as I can see, there are the witnesses whom your Lordship has just mentioned, of the defendant Goering,

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dealing with the question of Katyn.

My Lord, the next witnesses that were outstanding were three that the Tribunal allowed to be called for cross examination if desired in respect to the case of the defendant Kaltenbrunner. I have just had a word with Dr. Kaufmann and he says that he will not require the witnesses Tiefenbacher, Steinbauer and Strupp for cross examination.

As far as my information goes, the next is Admiral Boehm in the case of the defendant Raeder.

THE PRESIDENT: Before you get to that, Sir David, on the list that I have there was a witness called Strupp for Kaltenbrunner.

SIR DAVID MAXWELL FYFE: Yes, my Lord, there are three, Tiefenbacher, Steinbauer, and Strupp. Dr. Kaufmann tells me he doesn't want those.

THE PRESIDENT: Very well. Then you were speaking about the defendant Raeder.

SIR DAVID MAXWELL FYFE: My Lord, there is the question of Admiral Boehm. Dr. Siemers was going to let the Prosecution see an affidavit and I haven't seen it yet, but, my Lord, I don't anticipate that the Prosecution will require that witness unless the affidavit is in very different form from what I expect.

My Lord, the only other witnesses that I know about are the three for which application was made by Dr. Fritz yesterday in the present case. The Tribunal is considering that.

THE PRESIDENT: Yes.

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SIR DAVID MAXWELL FYFE: My Lord, that, as far as I can see, is the full extent of the outstanding witness, unless I have missed some.

THEPRESIDENT: Was there an application for witnesses from the defendant Bormann on the 26th of June?

SIR DAVID MAXWELL FYFE: Well, I asked Bergold thismorning. He has only got one witness that he is calling he told me, who unfortunately is not here today.

THE PRESIDENT: Well, I am told he has now arrived.

SIR DAVID MAXWELL FYFE: My Lord, your Lordship's information is later than mine.

THEPRESIDENT: It has only this moment come through.

But so far as the others are concerned, there is only the one that Dr. Gergold wants to call now?

SIR DAVID MAXWELL FYFE: So Dr. Bergold informed me this morning.

DR. BERGOLD: Only one witness has arrived, your Lordship. But I have to put in several more requests which have not been decided on and I cannot say whether these witnesses will actually be found. The Bormann case is characterized not only by the fact that the defendant cannot be found but almost all the witnesses cannot be found.

At today's session I should like to put a special application before the High Tribunal.

THE PRESIDENT: One moment. Will you tell us exactly which witnesses you are referring to?

In your letter of the 29 June you withdraw your application for Miss Christians.

DR. BERGOLD: Yes, Mr. President.

THE PRESIDENT: Dr. Kloepfer isthe witness who just arrived in Nurnberg.

DR. BERGOLD: Yes, there is then the witnesses Kupfer and Rattenhuber.

THE PRESIDENT: Well, Helmut Friedrich and the witness Christians has not been located.

DR. BERGOLD: No, he has not been found.

THE PRESIDENT: Are you wanting to call Miss Christians?

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DR. BERGOLD: She has not arrived either. She was at Camp Oberursel and she received leave and she has disappeared. It seems she has fled -- obviously she has fled.

THE PRESIDENT: Have you got your application of 26 June or did you make application on 26 June?

DR. BERGOLD: Yes, I did make application.

THE PRESIDENT: Whom did you ask for then?

DR. BERGOLD: Just a minute, I have to consult my secretary.

SIR DAVID MAXWELL FYFE: Miss Christians and Dr. Helmut Friedrich.

THE PRESIDENT: Well, Dr. Kloepfer and Friddrich.

SIR DAVID MAXWELL FYFE: Yes, and Miss Christians, My Lord.

DR. BERGOLD: On the 26 June I applied for the witnesses Falkenhorst, Rattenhuber and Kempka.

As far as I can see now, I can dispense with Falkenhorst if I may have Dr. Kloepfer instead.

THE PRESIDENT: Well, Dr. Kloepfer is the only one who has arrived, as I understand it.

DR. BERGOLD: Yes, the only one who has arrived, Mr. President.

THE PRESIDENT: What I think the Tribunal wants to know is how many you want to call now and with reference to the others you had better withdraw them if you cannot find them.

DR. BERGOLD: Very well, Mr. President, I wanted to put an application for postponement. The witness Dr. Kloepfer has just now arrived. Up until this time I have not had a chance to talk with him and I consider it unsuitable to have him testify here for the first time because he has not been prepared, he does not know the document which has been presented by the Prosecution and I myself do not know whether he has knowledge of the things I want to question him about. Therefore, I should like to apply that the examination and presentation of this case Bormann be postponed until Monday so that I shall have the opportunity to talk with him, my only witness, and to discuss the case with him.

Mr. President, I do not even know whether I want to have the witness put on the witness stand for he may not want to make statements that

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are irrelevant for after all, it is not my fault that he has not been here and I would not have found him even today if it had not been for the very kind assistance of the American Prosecution.

Mr. President, a postponement of my case until Monday at ten would be quite in keeping so that I may prepare my case.

My defendant has not been at my disposal and my witnesses have not been at my disposal. I have not been able to prepare my case.

THE PRESIDENT: Well, Dr. Bergold, you have had many months in which to prepare your case and the Tribunal has put the matter back for you already for a very long time and this witness is now here. You can see him immediately and the Tribunal thinks you ought to go on. You must have known that the case would come on in the same way every other case has come on in its proper place, subject to the license which has been allowed to you to have your case put back to the end and all your applications for witnesses and documents put back to the very latest possible moment and the witness is here and we still have some time to deal with the witnesses for Fritsche and documents.

The Tribunal thinks in those circumstances you ought to go on.

DR. BERGOLD: Mr. President, it is quite correct I have had time at my disposal but if I do not have the information andthe witness, I am asking the Tribunal to put themselves in my place, what do many months mean to me during which I cannot do anything and during which my hands were tied? Nobody could tell me where the witness Kloepfer could be found until the very last moment. In fifteen minutes I just cannot discuss the entire case with him andI am just asking for a very small postponement until Monday morning, and in that case just a very few hours would be lost.

It is not my fault that I have been assigned such an unfortunate defendant who is not present.

THEPRESIDENT: Dr. Bergold, the only thing you propose to prove by this witness is the alleged fact that the defendant Bormann is dead and any evidence he can give about that. That is what the application says.

DR. BERGOLD: No, Mr. President, that isa mistake. The witness Kloepfer will not testify as to that. He will testify as to the balance of the Indictment, as to the fact whether he is guilty or not and the fact as to the death of Kupfer, Christians and Rattenhuber, these witnesses

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will testify or can testify as to the death of the defendant. But this witness can only testify as to the balance of the Indictment and the charges made against my defendant.

THE PRESIDENT : Where is the application for KLOEPFER ? Where is your applications ?

DR. BERGOLD : That is the application put in on 26 May.

THE PRESIDENT : Let me see it. Have you got it there ? Dr. Bergold, do you not have anything else at all in the way of documents or evidence that you can continue with without call this witness KLOEPFER.

DR. BERGOLD : Mt Lord, the things at my disposal are so small and meager and I do not know whether those things apply until after I have talked with the witness for up to this point I have been dealing with suppositions only. I have not been able to receive or obtain any effective data.

MR. DODD : Mr. President, I have an objection to any post-ponement for this case. As the Court has pointed out, Counsel has had months and he has had every cooperation from our office, both for his documents and for his seeking out of his witnesses, and if he would stop talking and go out and talk with his witness, who is here now, I think he might be prepared to go on with his case.

THE PRESIDENT : Dr. Bergold, the Tribunal will go on with the case against the defendant Fritsche now, and in the meantime, you will have an opportunity of seeing this witness Kloepfer, and if after seeing him, you wish to make further application, you may do so, but the Tribunal hopes that if you can ascertain what the nature of his evidence is that you will be able to go on with it.

I now have you -- I had it only in German before, but I now have in English your application for the witness Kloepfer, and a summary of it is that he was head of Section 3 in the Party Chancellory "and that he can deal with questions relating to constitution of law and elaboration of laws and that he is to testify that the activity of Bormann in the proclamation of laws and ordinances was an entirely subordinate one." That is the only reason why you allege that you want to call him in your application.

DR. BERGOLD : There is the possibility that the witness in actually really knows much more, for he was one of the important co-workers. I formulated and stated my application very gingerly.

THE PRESIDENT : Well, I have said what you can do with reference to Kloepfer and are you still asking to call a witness called Falkenhorst.

DR. BERGOLD : I can only decide on that after I have talked with the witness Kloepfer. In all probability I shall forego the calling of this

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witness.

THE PRESIDENT : You heard what I said, Dr. Bergold. You can now see Dr. Kloepfer.

SIR DAVID MAXWELL-FYFE : My Lord, I only wanted the Tribunal to know that that was the position as to witnesses and when your Lordship asked me, I said that the process of finishing off witnesses might take two days. My Lord, subject to the Katyn witnesses, it might take much shorter than that, as I am at present advised.

THE PRESIDENT : Yes. And when shall we be informed what the position is with reference to the Katyn witnesses, as to whether there is an agreement as to using affidavits or calling witnesses ?

DIR DAVID MAXWELL-FYFE : My Lord, I will make inquiries and try to let Your Lordship know at the end of the session.

THE PRESIDENT : I take it that we shall not be able to go into that this morning.

SIR DAVID MAXWELL-FYFE : I do not think so. Apart from that, there are certain outstanding interrogatories which Counsel for the Defense may want to refer the Tribunal to, but that is the only other matter I know. From the point of view of the Prosecution, there may be a few documents which will be put in more or less to clarify points that have arisen during the case, rather than formal evidence and rebuttal. They will be quite small in number and will not take any time.

THE PRESIDENT : Were there any documents on behalf of the defendant von Neurath which have to be dealt with ?

SIR DAVID MAXWELL-FYFE : My recollection is that there were one or two interrogatories, but apart fron that I do not know of any others.

THE PRESIDENT : Perhaps those matters had better be gone into on Monday morning.

SIR DAVID MAXWELL-FYFE : If your Lordship pleases.

THE PRESIDENT : Well, the Tribunal hopes that Counsel for the defendants understand that the Tribunal will expect them to be prepared to go on with their speeches on behalf of the defendants directly the evidence is finished.

SIR DAVID MAXWELL-FYFE : My Lord, it is to try to give some indication of the time that I ventured to intervene this morning.

THE PRESIDENT : Yes.

SIR DAVID MAXWELL-FYFE : As I understant it, the proposal is

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that Professor Jarries will make his general speech first.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: I understand the Professor is ready to do that and I thought it would be useful if it were known that that might occur even on Monday.

THE PRESIDENT: Yes. Then, now, Dr. Fritz, perhaps you will continue with your witness,

MORITZ VON SCHIRMEISTER -- Resumed

DIRECT EXAMINATION -- Continued

BY DR. FRITZ:

Q. Witness, yesterday, toward the end of the session, we stopped with the following point dealing with the anti-Semitism expressed by the defendant Fritsche in his radio speeches, and in connection with that point, I have a further question.

According to the statements given by Dr. Goebbels, where were the Jews evacuated to ?

A. Up to the first year of the Russain campaign, Dr. Goebbels in his conferences, over which he presided, repeatedly mentioned the Madagascar plan. Later he changed this and said that a new Jewish state was to be erected in the East, a state to which the Jews were to be taken.

Q. Do you know whether Fritsche, dealing with reports from abroad, dealing with alleged German cruelties and atrocities, not only toward the Jews but toward other peoples as well, whether Fritsche always made inquiries at the TSHA or with other competent authorities or agencies ?

A. Yes. Not only with regard to atrocity reports but all propaganda reports from abroad which were unpleasant to us. He inquired with the officer of Mueller, of the RSHA in Berlin, or sometimes he inquired of the agencies that were directly concerned in these matters.

Q. And what other agencies and offices were there besides the RSHA to which he might have inquired ?

A. First of all, the food office, the Armament Ministry, the OKW; it all depended.

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Q. Do you know whether in reply to such inquiries a clear and credible denial was given out, or just what results did you achieve ?

A. It was not always a case of denial, not at all. Very frequently we received very clear-cut answers. For example, if it was claimed that there was a strike in Bohemia-Moravia, then the answer was, Yes, in that plant such and such a strike did take place, but always and without exception, a very-clear cut denial came through in all cases of concentration camp atrocities and so forth. Just through this fact, these denials were considered to be absolutely authentic and were given much credence. I should like to emphasize that this was the only possibility we had at our disposal for getting information. These pieces of information were meant, not for the public, but for the Minister, and again and again the answer was No, there is not one word of truth in these reports, and even today I do not know what other way we could have followed for getting information except the one that we did use.

Q. I should like to interpolate a question here. Can you testify as to the attitude taken by Fritsche on church questions ?

A. During the war Mr. Fritsche's views coincided with those stated by the Minister. At the beginning of the war, the Minister demanded complete agreement for everything which could have brought about any division of the German people would have been a dividing and disturbing influence. I do not know whether you want me to explain further.

Q. No, I shall turn to another and very important topic. Do you know, witness, what reasons Goebbels gave to his co-workers for the individual military actions taken by Germany ?

A He gave no reasons of his own, ever. He adapted his comments to the reports given out by the Fuehrer.

Q Just to quote some examples, tell us briefly whether the Defendant Fritsche knew in advance that there was a military attack planned, first of all, on Poland, secondly, Belgium and Holland, and, thirdly, Yugoslavia ?

A In the case of Poland, we of course knew that the question of Danzig and the Corridor was near a decision. Dr. Goebbels Himself, again and again, reassured us, and he himself believed in this, that a war would not result because of this; because, in a completely mistaken view of the attitude of the Western powers, he was convinced that they were only bluffing and that Poland would not risk a war without the military support of the Western Powers.

Q How about Belgium and Holland ?

A As to Belgium and Holland, on the preceding day the Italian Minister, Mussolini, had arrived for a visit of state. In the evening there was a stage presentation and afterwards a party was planned for them. During the night I had to call several gentlemen, and in the morning the Minister, in my presence, presented to Mr. Fritsche the two radio broadcasts which were to be transmitted; first, the military reasons were given, and second, the reasons for secret service. Mr. Fritsche didn't even have time to look at these reports, and he had a sore throat and couldn't talk so I had to read the second report; and I myself had not known about this report.

Q How about Yugoslavia ?

A The same thing applies here. In the evening the Minister had dismissed his adjutant; he had given him leave. During the night I had to call these various gentlemen over the phone to get them to assemble, and early in the morning, over the radio, a piece of news was broadcast which up to that period of time had been completely unknown to us.

Q And how about the case of the attack on the Soviet Union ?

A It was even more mad in this case. The Minister, for his own purposes, lied to the chiefs of his departments. In the beginning of May he selected ten out of the ordinary complement of twenty who ordinarily participated in the conferences, and he told these people : " I know that some of you gentlemen think that we are going to fight Russia, and I must tell you today that we are going to fight against England instead, for the invasion is imminent. Please

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marshal your work accordingly. You, Dr. Glassmeier, will attend to a new English slogan," and so forth. This was a pure and simple lie to his own supervisors and leaders of departments.

Q You, therefore, wish to assert that no one in the Propaganda Ministry knew of the imminent campaign against Russia ?

A No. In the Propaganda Ministry the following gentlemen knew about the Russian campaign -- and I may say that a letter from Lammers was the key to this whole problem, a letter in which Lammers, in confidence, told the Minister that the Minister intended to make Rosenberg the Eastern Minister. The Minister was to furnish a liaison man, who would be sent from our department to Rosenberg's intended department, and that of course was the key of everything. The people who knew about this were the Minister Kovosky who at that time was the personal expert, Dr. Taubert who was the liaison man who was appointed, I, because by accident I had read this letter, and the leader of the foreign Press, Dr. Boehmer. Dr. Boehmer and this is very important -- the day before he was arrested, in the presence of Prince Schamberg Lippert -- told me that he received the knowledge of this from Rosenberg's circle. I should like to emphasize that he did not have the information from the personnel of our Ministry. As leader on a parallel to Quitmann, both department chiefs, in ordinary ways, would have been advised. Boehmer did not know this from the Minister; therefore, Fritsche could not have known it in that way either. On the next day, because of this remark which he had made, he was arrested and later on he was killed in action.

Q Now I should like to summarize this part of my questions in the following : Did you notice at any time that before important political or military actions were taken by the government or the Party Goebbels used to exchange plans with Defendant Fritsche ?

A That is completely out of the question. That would have been in complete contradiction to the principles adhered to by the Minister. Not only did he not exchange questions of plans but neither did he inform anyone.

Q Now we shall turn to a different pattern of questions. The Prosecution is accusing Defendant Fritsche of the fact that he had influenced the German people along the lines of a master race idea and, along the same line, he incited hate against the peoples of other countries, Did Fritsche at any time ever receive instructions to conduct a propaganda campaign along the lines of a master race theory ?

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A Not at all, no. In this connection, you must know that Dr. Goebbels, together with the party dogmatism and might, those were things that Dr.Goebbels couldn't work; those were not things with which you could use methods. To him the Party was the large reservoir in which many different currents of the people should be united, and this idea of the master race, perhaps because of his own physical defect, he talked about this theory and he rejected it completely. That was nothing with which Dr. Goebbels wanted to concern himself; he couldn't use it. Shall I turn to the question of hate ? You asked me about that also. A propaganda of hate against other peoples would have been quite contrary to the propaganda lines as set out by Dr. Goebbels, for he hoped, and followed that hope to the end, that one day he could change from the policy of "against England" and "against America" to the policy of "with England" and "with America". And if you want to do that, or anything like that you can not use hate against these people. He wanted to travel and go with these peoples rather than against them.

Q Against whom was this propaganda to fight ? What was this propaganda to combat ?

A First of all, against systems, for, as Dr. Goebbels made the concept "plutocracy" to be that which the whole world knows today, later on the concept of "Bolshevism" was taken in from the other side, and in time this policy was directed against some of the men in power; But in that case he couldn't quite see eye to eye with the German Press and had trouble. He was quite indignant about that and in one conference he said : "Gentlemen, if I could put ten Jews in your place, they really would to the job." But later, he deviated from this pattern of attacking personalities such as Churchill. Because of his own counter-propaganda he became very much afraid that these men would become too popular as a result of being attacked by him and, apart from that, he personally didn't even hate Churchill. On the sly, he actually admired him. For example, during the entire war he had a picture of the Duke of Windsor on his desk. During this peiod of time he had a hate against individual men and always a complete hate against systems.

Q Witness, please before you answer the next question, check your memory very clearly, and above all, remember your oath. Tell me the aim of this propaganda for which Fritsche received instructions and carried through ? Was it to create and arouse unbridled passions which could be parralel to incitement

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to murder, or what was their purpose ?

A No. The arousing of passions was something that the Minister couldn't use at all in this propaganda, for passions rise and die down again. What the Minister did need was a steady and constant lying, on a constant level, with perseverence even in hard times. He wanted no whipping up to hate and murder; that would have been something that was quite against the German people and neither was it anything that Dr. Goebbels could use.

Q Was the German propaganda abroad, especially in Russia, under the direction of the Propaganda Ministry ?

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A. I have to differentiate and discriminate. I do not know whether I should enter into the divergence between Dr. Goebbels and Ribbentrop, for at the beginning the Foreign Office had demanded that the entire propaganda broadcast include specifically propaganda in foreign countries, propaganda of the radio broadcast to foreign countries and propaganda of the foreigners living in Germany -- propaganda directed toward those people -- and that all of these propaganda instruments be unified in his person and in his hands. There were pretty disagreeable differences.

Finally, this problem was put up to the Fuehrer himself for a decision. Both parties in the long run exploited this divergence for their own purposes.

Q. Witness, please be a little more brief.

A. I can leave this topic, for the difference between these two men is well known. However, I must turn to Russia. In Russia, press and propaganda up to about March of 1944 were subordinate to Mr. Rosenberg. And in this sphere as well, Dr. Goebbels --

THE PRESIDENT: What has this Russian propaganda got to do with the defendant ?

DR. FRITZ: No; the German propaganda in Russian territory, Mr. President was what I wanted to know, and I wanted him to answer with just one sentence or two. He has already said most of it.

THE WITNESS: Up until 1944, Rosenberg -- and that was much to the worry of Dr. Goebbels -- believed that the Russian campaign could have gone on without propaganda.

BY DR. FRITZ:

Q. I have one more question that I should like to put to you. Yesterday, when Dr. Fritzsche was on cross-examination, the prosecution presented several interrogation minutes of General Field Marshal Schoener, for instance records in which the testimony is unanimous to the effect that Fritzsche was the permanent deputy of Goebbels as propaganda minister. Is that correct ?

A. That is nonsense pure and simple; and I cannot see how a statement like that could be made. It is just not true.

DR. FRITZ: Thank you very much. Mr. President, I have no further questions to put to the witness.

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THE PRESIDENT: Does any of the other defendants' counsel want to ask any questions to the witness ?

(No response)

THE PRESIDENT: Does the prosecution wish to cross-examine ?

GENERAL RUDENKO: Mr. President, the prosecution does not intend to question this witness, but this does not mean that we accept without objection the testimony which has been given here.

THE PRESIDENT: The witness may retire.

DR. FRITZ: Mr. President, I should like to point this out further, and to request that the High Tribunal take judicial notice even of those documents which I do not quote, dealing with both my document books.

In my document book No. 2 you will find another affidavit deposed by Dr. Scharping, a document which I should like to submit to the High Tribunal as Fritzsche Exhibit No. 3, pages 16 to 19. This affidavit deals with the demeanor of the Defendant Fritzsche and the attitude he took against measures which Hitler had planned following the large-scale air attacks on the city of Dresden. I should like to ask the High Tribunal to take judicial notice of the contents of this affidavit, page 16 and those following, Document Book No. 2.

THE PRESIDENT: Dr. Fritz, the Tribunal observes that in Exhibit 3 which you have just presented to us, there is a statement by the person making the affidavit that after the bombing of German cities in the fall of 1944, "Dr. Goebbels stated that there was no longer any objection to handing over crew members of the crashed airplanes to the wrath of the people".

The Tribunal would like to have the defendant Fritzsche back in the witness box and to question him about that.

Did you ask any questions of the defendant Fritzsche with reference to this matter in your examination of him ?

DR. FRITZ: No. Mr. President, I hoped, and I wanted to say this at the conclusion of my case, that I expected a statement from Feltscher at Berlin. He is in custody up there, but I have not received any reply from him. And I should like to ask to be permitted to submit that when it does arrive.

THE PRESIDENT: Is that another interrogatory or affidavit that you mean?

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DR. FRITZ: Yes; it is a statement which deals with the same topic.

THE PRESIDENT: Yes.

DR. FRITZ: And if I may be permitted to add this at this point, Mr. President, I also expected to have a statement from the British radio commentator Clifton Delmar, which, however, has not arrived up until this minute. May I submit that ?

THE PRESIDENT: Certainly, you may. But what the Tribunal is concerned with at the moment is that they think it material that they should know --

DR. FRITZ: Yes, I quite understand, Mr. President.

HANS FRITZSCHE, a witness, was recalled and testified further as follows:

BY THE PRESIDENT:

Q. You are still under oath; you may sit down.

You have read this affidavit ?

A. I cannot remember it.

Q. We did not hear the answer to that.

A. I do not recall this affidavit which was just submitted by my counsel to the High Tribunal. know that it exists, however.

Q. The statement that the Tribunal wished you to be asked about was this:

"Beginning in the fall of 1944, Dr. Goebbels also spoke about this frequently during his so-called "Conferences of Ministers" ..."

I want to begin before that :

"The increasing effect of English and American air bombardments on German cities caused Hitler and his more intimate advisors to seek drastic measures of reprisal. Beginning in the fall of 1944, Dr. Goebbels also spoke about this frequently during his so-called "Conferences of Ministers", to which numerous officials and technicians of his Ministry were convened and which, as a rule, I also attended." -- That is, Franz Scharping.

A. Yes.

Q. "On such occasions Dr. Goebbels stated that there was no longer any objection to handing over crew members of crashed planes to the wrath of the people".

As you know, there has been a great deal of evidence about that before this Tribunal. Did you in your propaganda speeches make any references to this subject ?

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A. No, never in my propaganda speeches did I ask that the crew members of aircraft which had been shot down be killed. On the other hand, I know that Dr. Goebbels, for reasons of intimidation, or to serve the purpose of intimidation, already in the fall of 1944 had reports sent abroad, just to quote one example, to the effect that an Anglo-Saxon airplane which on Sunday had shot at the people who were on their way to church had been shot down later and that the members of the crew had been lynched by the mob.

Actually there were no real facts behind this report, and that could hardly be behind this report, for it is quite improbable that an airplane would be shot down at such a moment.

Dr. Goebbels, as is known, through a circular letter addressed to the Gau Propaganda Offices, asked that reports about such incidents, in case they actually did take place, should be transmitted to him. But to my knowledge he did not receive any factual reports to this effect. That was the period of time in which he wrote an article in the Reich about this subject. But I am sorry, I cannot give you the title of this article at this moment. In any event, this campaign increased and was intensified after, perhaps, January or February, and had died down in the days before the air attack on Dresden. But this campaign intensified itself on the occasion of this incident.

Dr. Goebbels declared in the 11 o'clock conference which has been mentioned quite frequently in this courtroom that in Dresden we were mourning 40.000 killed. At that time it was not known that the actual figure was an essentially higher one. Dr. Goebbels added to this report that there would have to be an end put to this terror in one way or another, and he said that Hitler had arrived at the firm conclusion that the same number of English, American and Russian flyers would be shot in Dresden, with the number to correspond to the number of inhabitants of Dresden who had lost their lives in this air attack.

Then he turned to me and asked me to prepare this action and announce it. There was an incident that occurred : I jumped up and refused to do this.

Dr. Goebbels broke off the conference. He asked me to come into his room, and there was quite a heated discussion between us.

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Towards the end of this discussion I persuaded him at least to the point where he promised me that he would try to use his influence with Hitler himself so that this plan would not be carried through. In connection with that I spoke to Ambassador Ruehle, the liaison man of the Foreign Office. I asked Ruehle to approach his minister along those same lines and to get him to do something as well. I then spoke to State Secretary Naumann and put a request to him along the same lines, to use his influence with Bormann, whose predominant influence was well known.

In that connection, because of the existing regulations, this was not permitted to me but, nevertheless, I had a discussion with the Protective Power representative. I told him about this in confidence and hinted, in a certain way, about the plans that I had heard about. I asked him whether he could suggest anything or furnish me with an argument or with an instrument so that I could fight against this plan more effectively and more intensively. He stated that he would attend to this matter with dispatch. He called me the next morning and we had a second discussion. On that occasion he told me that in the meantime he had had prospects of having prisoners exchanged --that is, an exchange of German and English prisoners--to comprise, I believe, 50,000 men.

I asked him to have this matter go through the usual and customary diplomatic channels, but to permit me to discuss the possibility of a prisoner of war exchange with Dr. Goebbels, Naumann, and Bormann. I did so, and just at that period of time the leadership was especially interested in having prisoners of war returned to their home countries so that they could once more take their place as soldiers.

Q How did you think that this possible exchange of prisoners was going to affect the question of whether 40,000 English and American and Russian fliers would be killed as a reprisal?

A The following seemed to appear to me. At the time

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when we had a chance to bring about an exchange of prisoners of war between two belligerents, an action which was beyond thoughts of humanity and beyond law had to be replaced by this. At that moment when we talked about an exchange of prisoners of war, the thought of a gigantic program of shooting of prisoners would have to be crowded out of the picture and would have to be pushed into the background.

I can conclude briefly. I told Dr. Goebbels about it. This plan was discussed in the evening with Hitler, and I had two reports from two different sources. Both of these reports coincided. An unusual circumstance was that this offer was sent through in the usual bureaucratic way some days after this strange incident had occurred.

BY THE TRIBUNAL (Judge Biddle):

Q When did you hear about Hitler's order, not with respect to those prisoners, but with respect to the fliers who had landed? When did you first hear of that?

You said that in the fall Goebbels had sent some propaganda abroad with respect to that order. Did you know about it then?

A Yes indeed.

Q You know about that order in the autumn of 1944?

A No.

Q When did you know about it?

A I cannot tell you exactly, but in the autumn of 1944 I did not know this order. Since I am under oath I have to be extremely careful. I believe I only heard about this order here in this courtroom. However, there is a little confusion in my memory; I seem to be confused about the campaign of Dr. Goebbels which I have just described.

Q Surely that order was discussed in that meeting in February when they were discussing the killing of 40,000 prisoners, was it not?

A No, on this occasion not at all.

Q You had no doubt that Hitler wished to have those prisoners killed, did you?

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A Of course, at that moment at which Dr. Goebbels was relating this I believed that Hitler planned to carry it through.

Q Then the answer is "yes".

Now, you had no doubt that Goebbels wanted them killed, did you?

A The 40,000 men?

Q Yes.

A Generally speaking?

Q Yes.

A Yes, I had no doubt that Goebbels agreed, as well.

Q And what other of the leaders wished them killed? It was apparently discussed a good deal; who else in the government was in favor of this policy?

A I cannot say that with assurance. The only other person who would be concerned here would be Bormann. However, I do know to the contrary, which was an attempt to persuade Hitler differently, made by Ruehle and by the then Foreign Minister Ribbentrop. He worked along these lines.

Q Ribbentrop was working in this particular problem of killing the prisoners? I am not clear on that. Did Ribbentrop know about it?

A I can say the following only from my own observations. At that time I instructed Ambassador Ruehle about it, and I asked him to try to mobilize Ribbentrop. Thereafter, a day or two later, Ruehle stated--we were telephoning back and forth and we were quite excited--

Q I don't need the details. The answer is that the Foreign Office knew, even if Ribbentrop personally may not have known. Is that right?

A Ribbentrop was informed personally.

Q That is all I want to know.

A Yes.

Q Do you know what attitude Bormann took in this matter?

A After the presentation that I heard he first supported

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this plan of Hitler's to shoot these 40,000, but afterwards, under the influence of Goebbels and Naumann he took the opposite view and worked with the thought of dissuading Hitler from this plan.

Q Were they only consulted in the matter of the commanders of the Wehrmacht?

A I am not able to tell you on that point.

Q It is suggested that I should also ask you this. Do you know what attitude Ribbentrop took on the shooting of these prisoners?

A Yes. After the report by Ambassador Ruehle he was in favor of preventing this shooting plan, and he tried to use his influence. However, I don't know how he tried to use his influence.

THE PRESIDENT: Dr. Fritz, do you wish to ask the defendant any questions?

DR. FRITZ: No, Mr. President.

THE PRESIDENT: Do the prosecution wish to ask any questions arising out of the questions that the Tribunal has asked?

GENERAL RUDENKO: No, Mr. President.

THE PRESIDENT: Then the defendant can return to the dock.

DR. FRITZ: Mr. President, this brings me to the conclusion of the presentation of evidence in the case of the defendant Fritsche.

THE PRESIDENT: Are you offering in evidence all of the documents in your two document books, each one of them?

DR. FRITZ: Yes indeed, Mr. President.

THE PRESIDENT: Are they marked with exhibit numbers?

DR. FRITZ: Yes they are. I have the originals at my disposal, and I have submitted them.

THE PRESIDENT: Very well.

Haven't you got two exhibits 1, exhibit 1 in one book and exhibit 1 in the other book?

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DR. FRITZ: No, Mr. President. Do you mean document book 1, Mr. President? There are no Fritzsche exhibits contained in document book 1.

THE PRESIDENT: Very well. That concludes the case of Fritzsche?

DR. FRITZ: Yes, Mr. President.

THE PRESIDENT: The Tribunal will adjourn.

(A recess was taken.)

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DR. BERGOLD: Dr. Bergold, for the defendant Martin Bormann. To the High Tribunal, first of all I wish to state that I do not wish the witness Dr. Kloepfer either since he has often closely cooperated with Bormann since 1942 and since therefore most of the documents on which the Indictment is based, cannot be referred to by him. Apart from that, he only ran the legislative department in the Party Chancellery. To the High Tribunal, to begin with I shall have to make one very brief principal remark. The defendant Bormann is absent. His associates, generally speaking, are not at my disposal either. For that reason, all I can do is try and submit some evidence on the strength of the documents submitted by the prosecution, bringing us to the conclusion that the defendant didn't play that legendary part which is now attributed to him, after the collapse. I, as a lawyer, dislike making something out of nothing and therefore I can only say very very little and I beg the High Tribunal to take notice of this. It isn't negligence on my part but it is the inability to do any better on the strength of the documents and without the assistance of the defendant.

First of all, then, I shall turn to the question whether the Case Bormann can be carried through and I had offered evidence to show that with the greatest probability, the defendant Bormann died on the 1st of May 1945, on the occasion of an attempted escape from the Reich Chancellery. As my first woman witness for this, I had named witness Else Krueger, which had been passed by the Tribunal. In my application of the 26th of June, I have stated that I should forego examining this witness if the High Tribunal would permit me to submit an affidavit instead of the examination and I have not yet received an answer to that application; but, I presume that, as I had heard from Dr. Kempner that prosecution were agreeable to this, that the High Tribunal wouldn't raise any objection to this either.

THE PRESIDENT: I thought the application was withdrawn with reference to the witness Krueger.

DR. BERGOLD: No. I have stated that I should forfeit having the witness provided I could submit an affidavit. There appears to be a misunderstanding here. The prosecution have just informed me that they would agree to this.

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MR. DODD: We have said we had no objection, Mr. President, to the use of the affidavit since he was waiving the calling of the witness.

DR. BERGOLD: In that case, I shall submit the affidavit under Bormann No. 12 to the High Tribunal. Then, I have three further witnesses who should testify that Bormann had died; first of all, witness Kempka who for many years had been Hitler's chauffeur, who was present when this escape attempt from the Reich Chancellery failed and that witness is not available. According to information which I have, he was interned at the camp at Freising in December 1945, in the hands of the American authorities, but unfortunately he has not yet been produced. I had also named witness Rattenhuber who was also present when Bormann died and according to the information which I have, he is supposed to be in the hands of the USSR. The woman witness, Christian, who had been granted me, could not be located. To begin with, she had been in the camp at Oberursel where she was interned and from there she was given leave and she used this leave to vanish. Apart from the affidavit of the witness Krueger, therefore, I have no proof for my allegation. I regret this very much indeed that I cannot clearly prove my point and I also regret that the high members of the prosecution haven't been able to support me any more because this will support the forming of legends very much indeed. There is a sort of falsified Demitrios or a "forged" Martin Bormann who are reporting to me, who are sending reports to me; and I thought it would be a service to the entire public, the German nation and the Allies if I be in a position to furnish the proof for which I had asked; and now I shall turn to my documents.

THE PRESIDENT: The Tribunal would like to hear this affidavit of Krueger read.

DR. BERGOLD: Yes. Very well, Mr. President. "Miss Else Krueger, born 9 February 1915, at Hamburg, Altona; secretary; at present living at Hamburg -- in Mansenweg 1. Approximately since the end of 1924, I have been one of several secretaries (approximately thirty to forty of them); figures and names cannot be accurately stated any longer. Secretary of the defendant Martin Bormann until the end and even after Hitler's death, I occupied that position. On the 1st of May 1945, I saw Bormann in the bunker of the Reich Chancellery for the last time and talked to him for the last time but at that point I was no longer working for him since at that point he was

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writing his own orders and wireless messages by hand. At that time in the bunker of the Reich Chancellery, all I had to do was prepare myself, within me, for my death. The last words he spoke to me, he spoke during an accidental meeting in the bunker and they were: 'Well, then, farewell. There isn't much sense in it now but I will try but very probably I shall not get through.' These, in their sense, were his last words. The exact words I can no longer recollect.

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"Later, in the course of the evening when the Russians had gotten very near to the center ofthe Reich Chancellery -- at least that is what I was convinced of at the time -- I, together with a group of about 200 people, mostly soldiers, left the shelter through a subterranean exit near the Chancellery, and we reached the underground entrance to the Kaiserhof. From there, we used subterranean passages and escaped into Friedrichstrasse. The further escape went through a number of streets, debris of houses, and I can no longer remember the exact details today because of the excitement of the situation.

"Eventually, in the course of the following morning, we reached some shelter or other, the location of which I cannot tell y u any more. It might have been the shelter at Humboldthain."

THE PRESIDENT: DR. Bergold, doesn't the affidavit deal with the defendant Bormann at all.

DR. BERGOLD: Oh yes, yes, we are coming to that.

"There, after some time, SS Gruppenfuehrer Rattenhuber appeared quite suddenly. He had been wounded in the leg and was brought in on a camp bed. When other people made inquiries as to where he was coming from, he stated in my presence that he, together with Bormann and others, had left by car and gone through the Friedrichstrasse. Presumably everybody was dead; there had been masses of bodies.

"I gathered from his statement that he believed Bormann dead. This appeared probable to me because, according to stories which I heard from soldiers whom I didn't know, all those people who had left the shelter after us had been under strong Russian fire and there were supposedly hundreds of dead."

I shall now skip a sentencewhich is irrelevant.

"Later, as far as I can recollect, I read in a British paper that Hitler's driver oflong standing, by the name of Kempka, is supposed to have made a statement somewhere according to which Bormann, withwhom, apparently, he fled, was dead."

That is all I have been able to find, Mr. President, and the real witness unfortunately hasn't been found.

I shall now come to the documents. In order to abbreviate my evidence, may I take the liberty of referring to the document book which I am

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presenting. We are exclusively concerned with instructions from Bormann which have appeared in the collection of orders from theDeputy of the Fuehrer. I beg the Tribunal to take judicial notice of these official instructions issued by Bormann andthe legal consequences arising from these documents I shall bring up during my final speech. I should merely like to refer to 2326, from which I should like to quote one sentence. It is under Figure 8. It is No. 8 in my document book, Mr. President. I should like to draw your attention to it without quoting from it.

I shall now turn to the document book which has been submitted by the Prosecution, and I shall turn to Document 098-PS, from which I shall quote on page 4, the second paragraph at the top. I shall quote a brief passage.

THE PRESIDENT: Did you say 098-PS?

Dr. BERGOLD: Yes, 098-PS, Bormann's letter dated the 22nd of February 1940, and addressed to Reichsleiter Alfred Rosenberg.

THE PRESIDENT: Page 4?

DR. BERGOLD: Page 4, Mr. President. It is the letter in which Bormann uses violent terms against the question of religion. He writes on page 4 as follows:

"With regard to religious instruction in schools it seems to me that nothing need be changed with regard to the prevailing conditions. No National Socialist teacher, according to the clear-cut instructions from the Deputy of the Fuehrer, must be accused in any way if he is prepared to teach religion in schools."

I skip one sentence and I continue:

"In the circular of the Deputy of the Fuehrer dated 3-39, it is expressly stated that teachers instructed to teach religion should by no means make their own choice of material for religious teaching from the Bible, but they are instructed to teach the entire biblical material. Any misinterpretations or separations in the sense of repeated attempts which have been made by individual churches, and that means the German Christians, must not be made."

I then quote from Document 113-PS, which is in the document book of the Prosecution. It is Instruction 104-38, and I quote:

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"The repeatedly emphasized neutrality of the Party with regard to the churches must indiciate that any possible friction must be avoided. Since clergymen, as political leaders, or leaders of affiliated associations, as has been shown by experience, have not the freedom of decision under those circumstances which is required, and as, on the hther hand, the movement, because of the church office which they hold, is threatened with being involved one-sidedly in the church struggle, the Deputy of the Fuehrer has ordered that clergymen should be relieved of their party positions as bearers of sovereignty at once and remain there until further instructions."

I then quote from Document 099-PS, in which Bormann, in a letter of the 19th of January, 1940, is addressing the Reich Ministry of Finance. He is objecting to the low contributions from the churches. I refer to the second paragraph, and I qude:

"The assessment of so low a contribution has surprised me very much. I gather from numerous reports that the political communities have to raise so high a contribution that the carrying out of their work, which is often very important, as for instance, in public welfare, is in jeopardy."

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I then skip one sentence and I continue:

"As I understand it, the assessing of so low a contribution is partly explainable from the fact that only those churches are making war contributi who are entitled to raise taxes in the old Reich whereas those churches of th Protestant and Catholic faith were entitled to raise church dues in the eastern territories and Südaten Gau are not being called upon."

I skip the rest of the sentence and I continue:

"Such a difference in treatment for individual sections of the churches organizations is, in my opinion, in no way justified."

I then quote from document 117-PS, a letter from Bormann to Rosenberg, dated 28 January, 1939. I quote from the second paragraph:

"The party in recent years has repeatedly contemplated the plan of a state church or some other close connection to be carried out in some way between the state and the churches. It has always turned down any such plans emphatically and this is for two reasons. Firstly, it would not fulfil the philosophical needs of national socialism if the state were connected with the churches, the holders of the extreme expression of religion, if suc churches did not have national socialist aims everywhere. Secondly, purely practical and political considerations oppose such a connection."

I then turn to document L-22, which deals with a conference in the Fuehrer headquarters dated 16 July, 1941, during which Hitler, Rosenberg, Lammers, Keitel, Goering and Bormann were present.

THE PRESIDENT: Could you tell us in what part of the book this is and what is the number ?

DR. BERGOLD: L-221 -- L-22. It is approximately in the middle of the book.

Bormann made this report in his capacity as secretary. The Prosecution have stated that Bormann's remarks show that the plans which were discussed on this occasion, regarding the inclusion of Russian territory into the territory of the Reich, had been approved by him. For this reason I shall have to read the remarks he made.

THE PRESIDENT: This is L-221, not L-22.

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DR. BERGOLD: The first remark follows the fourteenth paragraph and states as follows:

"Aside: as to a cultural class in the Ukraine or other Ukrainians of a better class exist only outside of the Russia of today is --."

THE PRESIDENT: Dr. Bergold, could you not tell us what original page it is ? In your document book there are headings "original page" so and so. Have not your documents got those words, "original page" so and so ?

DR. BERGOLD: There are these notations but you will have to give me one moment and I shall have to look through it again. The translation which I have received has different figures. It is page 4, Mr. President.

THE PRESIDENT: Thank you.

"We have to create a garden of Eden --."

DR. BERGOLD: Unfortunately, I did not understand you.

THE PRESIDENT: As I understand you, the first part of page 4 is : "We have to create a garden of Eden --."

DR. BERGOLD: Yes, this is the third paragraph -- no, it is the fourth paragraph.

THE PRESIDENT: Go on, then.

DR. BERGOLD: Have you got it, my Lord ?

THE PRESIDENT: I shall not know until you tell me how it begins.

DR. BERGOLD: It begins:

"A subsidiary question : Is there still a cultural class in the Ukraine ?"

THE PRESIDENT: Yes, I have got that, yes.

DR. BERGOLD: It is on page 3.

THE PRESIDENT: I think it is on page 4. It goes like this:

"Is there still anything like an educated class in the Ukraine ?"

DR. BERGOLD: According to the document which this gentleman has just submitted to me, it is on page 3 but it can be page 4 -- 3, 4-- 4, 3. Yes, it was page 3. Page 4 has a very similar remark and that says:

"There have been repeated occasions which have shown that Rosenberg has a great deal of liking for the Ukraine. He wants to enlarge the Ukraine considerably."

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And then as a last aside, on page 8 -- page 4-- five in the English third last paragraph :

"Please ask for the material from Dr. Meyer as soon as possible which refers to the proposed organization and proposed staffing of the organization."

Then at the end, page 6 of your original, last paragraph, it says:

"Incidentally, the Fuehrer emphasizes that the activity of the churches are out of the question. Papen through the Foreign Office had already submitted to him a lang memorandum in which it is stated that now the right moment had arrived to reintroduce the churches. But that was definitely out of the question."

This, Mr. President, is a remark referring to a statement by the Fuehrer, Adolf Hitler.

Then I come to document 1520-PS, and there I should first of all like to draw the attention of the Tribunal to the fact that in this record which Lammers had prepared, Bormann's presence is not mentioned at the beginning. Apparently because of his activity as secretary it was considered as a matter of course.

I should like to read from page 2 of your original.

The paragraph starts:

"Then the discussion turned to the problem of religious freedom."

I shall begin with the fourth sentence, eighth line:

"Bormann concurred with this attitude absolutely and I only stated that the question was whether the Reich Minister for the East, who had a name in Germany, after all, would not create too much of a tie by means of a law which would have repercussions in the Reich. But it was to be understood under alleged religious freedom which was to be interpreted by the churches that this could create and we could anticipate that such a law would produce hundreds of new letters and complaints on the part of the churches within the Reich."

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Then the second sentemce from that says:

"Finally it was agreed that the entire question should not be settled by myself" that is, Lammers, "in the form of a law, but that the Reich Commissioners take the existing religious freedom so to speak for granted and to decree the necessary executive orders."

Then I come to document 072-PS. This is a letter from Bormann to Rosenberg, and I should like to read the third paragraph. I quote:

"The Fuehrer states that in the Balkans, the use of your experts would not be necessary, since there are no art objects to be confiscated there. In Belgrade, only the collection of Prince Paul existed which would be returned to him intact. The remaining material of the lodges, etc., would be seized by organizations of Gruppenfuehrer Heydrich."

Then I come to document 062-PS, and from that I should like to quote the introduction in which Defendant Hess deals with orders he had issued with regard to the treatment of Bormann, and I quote:

"The French civilian population received official instructions and orders by wireless regarding the way they were to treat landing aircraft."

Then I come to document 205-PS. There I should like to quote the introduction which was written by Bormann.

THE PRESIDENT: What is the date of 062-PS?

DR. BERGOLD: 5th of May, 1943, circular letter number 7043.

INTERPRETER: You have 205, my Lord.

THE PRESIDENT: I think I've got it now.

DR. BERGOLD: 5th of May 1943.

THE PRESIDENT: No, but I wanted to know the date of 062-PS. It appears to be 13 March 1940.

DR. BERGOLD: 062-PS? Yes, that's 13 March 1940. That's the one I read previously.

THE PRESIDENT: The Tribunal does not understand why you read the document in view of paragraph 4 which is as follows:

"Likewise, enemy parachutists are immediately to be arrested or liquidated."

DR. BERGOLD: I shall refer to that in my final speech. It is later

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that I can describe my reasons. But, I can give my arguments now if the Tribunal wants me to, but I don't think they do.

THE PRESIDENT: No. I thought you might have another paragraph in the document that you wish to refer to.

DR. BERGOLD: No. I should like to direct your attention to the introduction which is a statement from Defendant Hess and which precedes Bormann's document. I shall now turn to document 205-PS, dated May 5, 1943. I shall quote the following sentence:

"I request in the attached copy that the necessity for a firm but just treatment of the foreign workers be made clear to members of the party and the people."

This circular letter as such was issued by Defendant Sauckel, of course. I now come to document 025-PS, which is dated 4 September 1942.

THE PRESIDENT: Which number are you going to now?

DR. BERGOLD: I now come to 025-PS, dated 4 September 1942, and I shall quote the last sentence from the second paragraph.

"Therefore," and this is also the opinion of the Reichsmarshal and Reichsleiter Bormann, "the housekeeping problem must be solved through a definite way by the above mentioned one."

And then I quote from paragraph 3, starting with the second sentence: "In connection with this, that is, the introduction of eastern women workers," this is also approved by Reichsleiter Bormann, "the illegal bringing of female housekeepers into the Reich by members of the armed forces or various other agencies is to be allowed and furthermore, irrespective of the recruiting, is not to be prevented in the future. The determining factor in the recruiting of Ukranian female workers is this. In accordance with the specific wish of the Fuehrer, only such girls are to be recruited whose stay in Germany will be determined by their conduct, physical appearance, and there will be no scruples."

Then, I shall read the last paragraph on page 3 of your document book. "In practice, recruiting in the case of domestic servants is to be based particularly on volunteers. It is to be carried out by the Service Department of the Reichsfuehrer SS."

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This completes my quotations from the document book of the Prosecution, and I should like only to refer to my future final speech for the purpose of which I shall use document USSR-172. And also, document Doenitz 91, and with this, Mr. President, my evidence is completed.

MR. DODD: Mr. President, may I suggest that if this witness Kempka can be located, counsel might submit an affidavit or an interrogatory to any persons who have knowledge of the alleged death of Defendant Bormann. We certainly would have no objection to it.

DR. BERGOLD: I have no objection either.

THE PRESIDENT: Dr. Bergold, have you any information as to what this witness Kempka can tell us about the death of Bormann?

DR. BERGOLD: According to the affidavit which I have read this morning, he is supposed to have been in prison when Bormann died -- when a tank blew up. He would therefore, then, be an eye witness of this, just as the witness Rattenhuber, from who Krueger got her knowledge. If the witnesses Krueger and Rattenhuber could be found, then I would be satisfied with affidavits and interrogations.

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MR. DODD: Mr. President, I have seen this statement by Kempka some time ago, which is in affidavit form, and which has come to our attention. But my recollection is that he does not state positively that he saw him die. But I again suggest that we might make further efforts to get an affidavit from him, or an interrogatory, and ask him questions about the circumstances of his death.

THE PRESIDENT: A statement was made to the Tribunal at one time by the prosecution suggesting that Bormann had escaped from the Chancellery in a tank and then the tank had been stopped or blown up on a bridge, and that two of the persons inside the tank had last seen Bormann wounded, or something of that sort.

MR. DODD: Yes, I think that is the best information.

THE PRESIDENT: Mr. Dodd, if the prosecution has any material in the shape of affidavits or anything of that sort, the Tribunal would like to have them placed before them.

MR. DODD: Yes, sir. I am sure we do not have an affidavit. As I recall, it was last fall when someone sent down here what purported to be a narrative account by Kempka of the last days in Berlin. I will try to look that up and present it to you.

THE PRESIDENT: If you can go into the matter, then possibly they might be located through the investigations which you would make.

MR. DODD: Very well.

THE PRESIDENT: Then interrogatories or affidavits could be obtained.

MR. DODD: Very well, sir.

THE PRESIDENT: Then that concludes your presentation of evidence on behalf of Bormann?

DR. BERGOLD: That is all I have, Mr. President.

THE PRESIDENT: Very well. Thank you.
Colonel Pokrovsky, is there anything you wish to say?
I beg your pardon, Dr. Bergold. You have offered in evidence all the exhibits that you want to offer and have given them

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exhibit numbers, have you?

DR. BERGOLD: Yes, Mr. President, in my document book.

THE PRESIDENT: You are intending to offer your document book as evidence?

DR. BERGOLD: Yes.

THE PRESIDENT: It has exhibit numbers on each document, has it?

DR. BERGOLD: Yes; each document has a number.

THE PRESIDENT: Very well.

Colonel Pokrovsky, the Tribunal would like to know whether you have arrived at any agreement with Dr. Stahmer on behalf of the defendant Goering with reference to affidavit evidence or witnesses, with reference to the Katyn matter.

COLONEL POKROVSKY: My Lord, we have had three conferences with the defense counsel. After the second meeting, I told the Tribunal of the fact that in the interests of curtailing the proceedings, the Soviet prosecution was in agreement to having the witnesses' evidence submitted so that part of this evidence would be weighed. But about 15 minutes ago, I had a meeting with the defense counsel, and Dr. Exner and Dr. Stahmer told me that they understand the position in such a way that the old decisions regarding the summoning of two witnesses to the Tribunal are still in force. Now we are discussing only additional documents.

I do not think we shall be able to say that we have reached an agreement when the position is such as it is now. As far as I understand it, such a decision remains with the Tribunal.

THE PRESIDENT: The Tribunal orders that unless an agreement is arrived at, the evidence shall be given entirely by affidavits and that the three witnesses on either side shall be called the first thing on Monday morning at 10 o'clock, unless you can arrive at an agreement before that that the evidence is to be offered in affidavits.

DR. SIEMERS (Counsel for the defendant Raeder): Mr. President, may I be permitted to say something on this subject? A number of defendants' counsel are

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interested in the case Katyn. I have had a conference this morning with Dr. Exner and Dr. Stahmer. We had proposed to ask the Tribunal to handle the matter in such a way that two witnesses are to be examined by the defense here before this Tribunal in person. Those would be Oberst Arens and Full Lieutenant von Eichborn, whereas the third witness would not be examined but an affidavit would be submitted instead.

In addition to that, there would be two further affidavits. We believe Mr. President, that in this way we have found a procedure to suggest to the Tribunal which would be sufficient and at the same time would save the most time; that is to say, if we hear two witnesses and produce three affidavits.

THE PRESIDENT: Dr. Siemers, the Tribunal sees no objection to there being two witnesses called and one affidavit. But their order was that the evidence should be limited to three witnesses on either side, and they, therefore, are not prepared to allow further affidavits to be given. The evidence must be confined to the evidence of three persons on either side. They may give their evidence either by oral testimony or by affidavit.

DR. SIEMERS: Mr. President, as far as I was told, the original decision is supposed to have stated that three witnesses were allowed, without affidavits being mentioned. And that is why Dr. Stahmer and Dr. Exner had assumed that apart from the witnesses and with regard to certain individual points which should be proved, this could be done by means of affidavits.

I believe, therefore, that if two witnesses and three affidavits are produced, this would be quicker than if we had three witnesses.

THE PRESIDENT: I am afraid Dr. Stahmer and Dr. Exner drew a wrong inference from the order of the Tribunal. The Tribunal intended and intends that the evidence should be limited to the evidence of three witnesses on either side, and whether they give their evidence by oral testimony or by affidavit does not matter. We left it to the Soviet prosecution and to defendant's counsel to see whether they could agree that it should be given by affidavit in order to save time. But that was not intended to extend the number of witnesses who might give evidence.

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DR. SIEMERS: Mr. President, in that case, I should be grateful if you would be kind enough to hear from Dr. Stahmer of Professor Exner, since I have not been in Nürnberg recently. I did not, therefore, participate when these details were negotiated and it would probably be better if Dr. Stahmer discussed this. I have just discovered that Dr. Stahmer is here. Perhaps he could speak about it.

DR. STAHMER: I have just heard from Dr. Siemer's words, and I had already drawn your attention to the fact, that during the last discussion we had on this, Dr. Exner and I had understood the situation in such a way that besides the three witnesses we were also allowed to submit affidavits. There were five witnesses who had been allowed originally, with the reservation, however, that only three of them could be heard in this courtroom. We were under the impression, therefore, that those witnesses out of the five who had been granted us who were not being heard could submit affidavits.

The original decision allowed five witnesses, and then came the decision according to which only three --

THE PRESIDENT: That is not the recollection of the Tribunal; and if you say so, you must produce written evidence that that was the decision. The Tribunal's recollection is not that five witnesses were allowed.

DR. STAHMER: Yes; I shall submit these decisions to the Tribunal in writing. I cannot remember off-hand when they were made, but it was originally five witnesses, and then I claimed another witness, and he was also allowed. It was only afterwards that the decision was made that only three could be heard before this Tribunal.

THE PRESIDENT: Dr. Stahmer, when the order was made limiting it to three out of five, there was no reference in that order to affidavits, as far as I know.

DR. STAHMER: No, affidavits were not mentioned.

THE PRESIDENT: What I am telling you is that the Tribunal in making that order of limitation intended to limit the whole of the evidence to three witnesses on either side, because the matter is only a subsidiary allegation of fact, and the Tribunal thinks that at this stage of the proceedings such an allegation of fact ought not to be investigated by a great number of witnesses, and three witnesses is quite sufficient on either side.

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There fore, the Tribunal does not desire to hear, and did not intend that it should have to hear, any evidence except the evidence of three witnesses, either by oral evidence or by affidavit.

The Tribunal will now adjourn.

(The Tribunal adjourned until Monday 1 July at 1000 Hours.)